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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 451 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORECHANDRA VRAJLAL BHATT

Versus

SAROJBEN KISHORCHANDRA BHATT

Appearance:

MR SANDEEP N BHATT for Petitioner

MS SNEHA P VAIDYA for Respondent

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/06/2001

ORAL JUDGEMENT

1. Heard learned advocate Mr.S.N.Bhatt for the petitioner and learned advocate Ms.Sneha P Vaidya for the respondent.

2. The petitioner has challenged the order passed by

the learned Assistant Judge, Gondal dated 11/10/2000 in the proceedings of Civil Misc. Application No.35 of 2000 for condonation of delay. By the impugned order, the lower appellate Court has rejected the application of the present petitioner by holding that the petitioner has failed to explain the delay satisfactorily for a period from 7/4/2000 to 8/5/2000.

3. The present petitioner has filed H.M.P.No.23 of 1998 against the respondent in the Court of Civil Judge (S.D.), Gondal, District Rajkot which came to be dismissed by judgment and decree dated 7/4/2000. That in order to challenge the said judgment and decree of dismissal, the present petitioner desired to file an appeal. However, as the delay of 41 days was caused in presenting the appeal memo within the prescribed period, Civil Misc. Application No.35 of 2000 was moved wherein the petitioner has stated that his advocate failed to intimate the petitioner about the judgment and decree of the dismissal dated 7/4/2000 on the very day and that thereafter, as he was suffering from back ache, he could not travel and thereby delay is caused. That the present respondent seriously contested the Civil Misc. Application and the learned Judge vide impugned order, dismissed the application and hence, the present revision.

4. It would be pertinent to note that the lower appellate Court in his order vide para-(5) has accepted the contention of the respondent that the petitioner has failed to explain the delay satisfactorily and the said contention has been accepted by the lower appellate Court on the ground that the fact pleaded by the petitioner i.e. advocate did not inform about the judgment and decree dated 7/4/2000 cannot be believed, as no affidavit of the advocate is filed. However, the lower appellate Court appears to have overlooked the fact that the petitioner himself has filed affidavit in support of the application wherein he has stated the said fact. That the lower appellate Court has also appeared to have overlooked the fact that the advocate of a party would be reluctant, particularly in respect of the fact that he did not inform the advocate. The observation of the Apex Court as well as this High Court incorporated by the lower appellate Court in the impugned order would have fortified, this contention of the petitioner for condonation of delay.

5. It is also pertinent to note that though the lower appellate Court has stated that the Court should not be too technical while deciding the application of

condonation of delay, the lower appellate Court has dismissed the application on a technical ground that fact pleaded in the application has not been supported by the affidavit of the advocate. The said reasoning has caused failure of justice, and as such, interference of Revisional Court is warranted.

6. In overall consideration of the facts and particularly the facts pleaded in the application that applicant did not know the date of pronouncement of the judgment and decree on 7/4/2000 because his advocate did not inform him, this would be a fit case to condone the delay in the context of the observations made by this Court in various

authorities as incorporated by the lower appellate Court in the impugned order and as such, the present Revision Application is required to be allowed.

7. On the basis of foregoing discussion, this Revision Application is allowed. The impugned order dated 11/10/2000 passed by the Assistant Judge, Gondal in proceedings of Civil Misc. Application No.35 of 2000 is hereby quashed and set aside. The Civil Misc. Application No.35 of 2000 is allowed. The delay of 41 days in presenting the memo of appeal against the judgment and order dated 7/4/2000 in the matter of H.M.P.No.23 of 1998 is hereby condoned. Rule to that extent is made absolute. No order as to costs.

(A.K.Trivedi,J.)

(vrpanchal)*